Supreme Court, U.S.
FILED

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No. _____ OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

JOHN CALDWELL TIMMONS,
Petitioner

v.

RAK REE ENTERPRISES, Inc.,
Respondent

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Supreme Court of Ohio

PETITION FOR A WRIT OF CERTIORARI

John Caldwell Timmons
Petitioner pro se
10375 U.S. 23
Lockbourne, Ohio 43137
(614) 983-3654

70 pp.

BEST AVAILABLE COPY

QUESTIONS PRESENTED

1. The State of Ohio requires the submission and deposit of a supersedeas bond to obtain a stay while appeals are taken from Orders of Sale and Judgment Decrees in Foreclosure. Would this not therefore create a violation of an individual's right to due process and equal protection, guaranteed by the Fourteenth Amendment, based solely on economic condition?

2. Does Ohio law preclude equitable relief when restrictions are placed upon appeals of confirmation orders. Is there a conflict in the REED v. Radigan and Third National City Bank of Circleville v. Speakman?

3. Can an "allowed claim", established by a bankruptcy court, have the "full faith and credit" for judgments, or, once a bankruptcy case is dismissed without discharge of debt, does that court's jurisdiction over the person end with the dismissal?

LIST OF ALL PARTIES

Pursuant to S. Ct. Rule 14.1(b), Petitioner supplies the list of all parties at Appendix, p.

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PETITION FOR A WRIT OF CERTIORARI

CITATIONS TO OPINIONS BELOW

Pursuant to S.Ct. Rule 14.1(d), the Petitioner submits the following citations of the of the official and unofficial reports of the opinions and orders entered in this case below:

RAK REE Enterprises, Inc. v. Timmons, (Pickaway 1995), Tables, 648 N.E. 2d 510, Emergency appeal not allowed;

RAK REE Enterprises, Inc. v. Timmons, (Pickaway 1995), Tables, 654 N.E. 2d 510, Jurisdiction denied;

RAK REE Enterprises, Inc. v. Timmons, (Pickaway 1995), 101 Ohio App. 3d 12, 654 N.E. 2d. 1370, District Opinion

JURISDICTIONAL STATEMENT

This is a petition for certiorari with regard to a decision of the Supreme Court in the State of Ohio to refuse jurisdiction for the Petitioner's appeal on September 3, 1997. This Court has jurisdiction of this petition pursuant to 28 U.S.C. Section 1257(a) and S.Ct. Rule 10(a) and 10(c).

STATUTORY PROVISIONS INVOLVED

Pursuant to S.Ct. Rule 14.1(f), Petitioner hereby sets out in full the text of Rule 54(B) of the Ohio Rules of Civil Procedure:

(A)

B) **Judgment upon multiple claims or involving multiple parties.** When more than one claim fore relief is presented in an action whether as a claim, counter claim, cross-claim, or third-party claim, and whether arising out of the same or separate transactions, or when multiple parties are involved, the court may enter final judgment as to one or more but fewer than all the claims or parties only upon an express determination that there is no just reason for delay. In the absence of a determination that there is no just reason for delay, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of all the parties, shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

Petitioner sets out a shortened portion of the Fourteenth Amendment which has perspective in the case herein:

The Fourteenth Amendment to the Constitution of the United States of America forbids an individual state from making or enforcing any law that abridges the privileges and immunties of citizens of the United States; and secures all "persons" against any state action which results in the deprivaion of life, liberty, or property without due process of law, or in denial of the equal protection of the law.

STATEMENT OF THE CASE

On June 18, 1993, the Ohio Court of Common Pleas in Pickaway County filed a Judgment Decree in Foreclosure for Case No. 86-CI-337. The mortgage was in default and the first and second mortgagees had elected to foreclose upon the property. The property was sold Tuesday, March 29, 1994, pursuant to an Order of Sale or Writ of Execution issued by the Clerk of Courts. However, this court had failed to adjudicate the claim for the first mortgagee and only listed the summary judgment for the second mortgagee on the decree. The sale was further complicated by a defect in the Notice of Sale that incorrectly advertised the sale for Tuesday, March 28, 1993. The defendant-mortgagor filed separate motions for stay based upon the defect in the advertisement and the court's failure to adjudicate the first mortgagee's claim, but the property was sold without response to the motions. The errors were further compounded when, to the detriment of the defendant, both the trial and appellate courts sought a mechanism to legitimize the sale.

COURT OF COMMON PLEAS FORECLOSURE

CASE NUMBER 86-CI-337

On April 19, 1979, John Caldwell Timmons, herein the Petitioner pro se, purchased two hundred thirty four acres (234 acres), from an Ohio General Partnership named RAK REE Enterprises, Inc. The contract specified that thirty per cent of the purchase price plus a first mortgage would be conveyed to RAK REE in order to transfer the deed for the property. The mortgage payments were calculated utilizing a thirty-year amortization with a declining principal balance but specified that the remaining principal balance would become due and payable with the seventh year's mortgage payment; a balloon payment. Farm Credit Services (FCS), then called Production Credit Association (PCA), advanced

the down payment in exchange for a second mortgage on the land and a first mortgage on Petitioner's farm machinery.

Timmons experienced flooding, weather problems, declining land prices, and escalating interest rates during this period and was unable to arrange for refinancing and could not satisfy the terms of his contract when the mortgage and balloon payments matured in the spring of 1986. The first mortgagee filed a complaint in foreclosure on July 21, 1986 and the second mortgagee followed with a cross-complaint. Timmons filed an answer and offered to return the property to RAK REE, to satisfy the terms of the purchase contract, but the offer was declined. Timmons filed for protection under U.S.C. Title 11, Chapter 12 of the Bankruptcy Code on December 13, 1986.

BANKRUPTCY CASE NUMBER 2-86-05021

Just before the bankruptcy confirmation hearing, RAK REE offered to reduce the outstanding principal and interest owed on the land to one hundred twenty thousand dollars ($120,000.00) in exchange for approximately thirty-four acres (34 acres) of frontage on United States Route 23 (about six miles south of Columbus, Ohio). Timmons accepted the offer, granted further concessions, and agreed to certain restrictions at a continued hearing.

The attorneys representing Timmons, RAK REE, and Farm Credit Services, agreed to the novation and, to satisfy the statute of frauds, placed their signatures on the order that confirmed the First Amended Plan of Reorganization. The court approved the novation and confirmed the Debtor's plan of reorganization. Deeds for two individual parcels of property were voluntarily filed by RAK REE March 28, 1988. The transfer fees, paid by Timmons, were calculated

from the amount of the debt reduction with an acreage value assigned for the transfer.

Bankruptcy Case No. 86-54857 was dismissed without discharge of debt on April 22, 1992. Six payments to RAK REE and four payments to Farm Credit Services were made during this attempted reorganization, but crop failure and weather associated difficulties continued into this period and the debtor was unable to complete the scheduled payments.

BANKRUPTCY CASE NUMBER 2-92-04161

Timmons felt that reorganization was still possible if the weather patterns were to change; normal production, prices, and yields would permit the restructuring of the debt. FCS' claim would now be established at 100% whereas the RAK REE debt would not be affected by the dismissal. Timmons filed a second Chapter 12 Petition for Reorganization, Bankruptcy Case Number 2-92-04161, on June 18, 1992.

Another flood occurred in late June of that year which destroyed crops and extinguished Timmons' hope for rapid recovery. The bankruptcy court also denied confirmation of the debtor's first plan of reorganization and, faced with an untenable present circumstance with an uncertain future, Timmons decided not to present an amended plan of reorganization. The case was dismissed October 7, 1992 with sanctions for failure to prosecute pursuant to Section 109 (g) of the bankruptcy code.

RENEWAL OF ACTION IN STATE COURT

On November 9, 1992, RAK REE renewed foreclosure with a motion for summary judgment to the Ohio

Court of Common Pleas in Pickaway County. This Creditor claimed that Timmons still owed them about two hundred twenty-four thousand dollars (~$224,000.00). Their previous claim in state court, one year earlier, had been for about fifty nine thousand dollars (~$59,000.00) while they claimed seventy-five thousand dollars (~$75,000.00) during the Debtor's second attempt at reorganization. Timmons filed an objection to the RAK REE claim but did not oppose Farm Credit Services' motion for summary judgment on their claim for one hundred thirty thousand, two hundred seventy-one dollars and eighty-five cents ($130,271.85). A summary judgment was subsequently entered in favor of FCS on April 7, 1993 for the sum specified in the motion.

Several continuances were granted RAK REE until a hearing was actually held June 14, 1993. RAK REE presented their claim for about two hundred thirteen thousand dollars (~$213,000.00), Timmons presented evidence that the RAK REE debt was only about fifty thousand dollars plus interest (~$50,000.00), while the Court of Common Pleas in Pickaway County tried to promote a compromise for seventy five thousand dollars ($75,000.00). This hearing was also continued to enable Timmons the opportunity to obtain testimony from the Chapter 12 Trustee in regard to the events and the payments made RAK REE during the first reorganization. The Court had initially approved a motion to quash subpoenas, filed by the Trustee's Attorney, after copies of cancelled checks were provided the Defendant. However, the court later required the Trustee's testimony at a continued hearing, because, at the June 14 hearing, one of RAK REE's principals could not identify his signature on copies of the checks and could not remember what payments had been received from the Trustee.

The continued hearing on RAK REE's motion for summary judgment was held July 23, 1993 with testimony

from the Bankruptcy Trustee. At the conclusion of the hearing, Farm Credit Services' Attorney announced that a sale date had been established for about five weeks hence and that advertising for the sale would begin that week. Timmons objected and requested a stay until after the RAK REE claim was established. The Court announced from the bench that a stay of judicial sale could be obtained if the Defendant were to deposit the property's appraised value, two hundred thousand dollars ($200,000.00), for a supersedeas bond. The Court then required RAK REE to file a brief in support of their motion for summary judgment and for Timmons to respond, within the following seven days, with a memorandum in opposition to summary judgment.

RAK REE filed their supplemental memorandum in support of summary judgment on July 30, 1993. This creditor attempted to justify a judgment for two hundred thirteen thousand, nine hundred fifty-five dollars and thirty-seven cents ($213,955.37). This seemed to be quite inflationary when viewed from the perspective that their original claim had been for about fifty-nine thousand dollars (~$59,000.00) and their claim in bankruptcy court had been seventy five thousand dollars ($75,000.00) the previous year.

Timmons filed a supplemental memorandum in opposition to summary judgment on August 6, 1993. He attempted to demonstrate that the RAK REE claim had been reduced to the sum of fifty thousand, five hundred thirty-three dollars and forty-five cents ($50,533.45) plus accrued interest of about sixteen thousand dollars (~$16,000.00). The calculations were based upon the novation (offer and acceptance), the value of the property transferred (performance and consideration), and the payments made by the Chapter 12 Trustee (partial satisfaction). One hour later, Timmons filed a pro se petition for reorganization pursuant to U.S.C. Title 11, Chapter 12 of the Bankruptcy Code.

BANKRUPTCY CASE NUMBER 93-54857

Dual bankruptcy court valuation and confirmation hearings were held December 13, 1993. RAK REE still attempted to claim approximately two hundred thirteen thousand dollars (~$213,000.00) even though their claim had only been seventy-five thousand dollars (~$75,000.00) for Bankruptcy Case Number 2-92-04161.

Testimony from RAK REE was presented and, after a heated exchange between the Court and RAK REE's attorney, the Court allowed a claim for one hundred twenty thousand dollars ($120,000.00). The Court announced that this sum would be used in the following confirmation hearing and that Timmons could file a motion for reconsideration, with new evidence for determination of the claim, at a later date. Timmons had intended to present the terms for the novation, the cancelled checks, and the evidence of property transfer upon cross-examination of RAK REE's witness and was startled when the court declared a recess.

The Court reconvened with testimony in regard to feasibility and the issue of "bad faith" presented by the Bankruptcy Trustee (previously subpoenaed by Timmons in state court) and RAK REE's Attorney. Timmons had attempted to establish that the issue of bad faith was limited to fraud, concealment of assets, criminality, or other non-disclosure issues and could not be associated with previous attempts at reorganization. The court determined, however, that multiple filings were indicia of bad faith and dismissed the case for bad faith and lack of feasibility with sanctions pursuant to section 109 (g) of the Bankruptcy Code.

FEDERAL APPEALS

Appeals were separately taken from the order of dismissal, Case Number C-2-94-163, and the order that established the allowed claim for RAK REE at one hundred twenty thousand dollars ($120,000.00), Case Number C-2-94-164. Timmons also filed a motion for stay, pending appeal, with the bankruptcy court. This court denied the stay and, upon a subsequent motion, the United States Court of Appeals for the Southern District of Ohio also refused to grant a stay. Timmons continued to the United States Court of Appeals for the Sixth Circuit with an appeal, patterned after the Cohen exception to finality, pursuant to U.S.C. 28 Section 1291 although the jurisdiction to entertain the appeal should probably have been cited pursuant to U.S.C. 28 Section 1292 (a)(1). The farm was sold at judicial sale, in the interim, and the appeals to the Sixth Circuit were dismissed because the issue regarding stay of sale had been rendered moot.

FIRST JUDICIAL SALE

On March 24, 1994, Timmons filed a motion for stay of sale with the Ohio Court of Common Pleas in Pickaway County. The motion was in response to the defect in the Notice of Sale that gave Tuesday, March 28, 1993 for the sale date; the sale would have occurred more than one year earlier. Whether the sale was held Monday the twenty-eighth or Tuesday the twenty-ninth might also have caused confusion to some interested parties.

A second motion for stay of sale was filed with the trial court on March 28, 1994; Timmons correctly stated that no judgment for the first mortgage holder had been established which violated Rule 54(b) of the Ohio Rules of Civil Procedure. The motion had copies of the Notice of Appeal to the Sixth Circuit appended and the Defendant argued that appeals were being taken from the order of

dismissal and the order which established the allowed claim for RAK REE at one hundred twenty thousand dollars ($120,000.00). The Defendant believed that to continue with a judicial sale, while these appeals were pending, was improper. There was no response to either motion.

The judicial sale was held Tuesday, March 29, 1994. The Ohio Department of Natural Resources was the successful purchaser with a bid of two hundred five thousand dollars ($205,000.00). However, the purchaser was later identified in the docket as Ducks Unlimited, a national conservation group committed to hunting and expansion of waterfowl populations. Prior to the sale, the Trial Court filed an entry waiving the requirement for a ten per cent down payment if the successful purchaser was the State of Ohio.

AGREED ENTRY

Immediately after the sale, RAK REE and Farm Credit Services filed what was termed an agreed entry. This document described the understanding reached between the creditors and established how the sale proceeds were to be distributed. After court costs, land taxes, and sheriff's poundage, RAK REE would receive seventy five thousand dollars ($75,000.00) which was to be applied to their "judgment" of one hundred twenty thousand dollars ($120,000.00) established in bankruptcy court. The remainder would go to FCS, the second mortgagee, up to the extent of their claim established by summary judgment. Any funds remaining would then go to RAK REE to satisfy the rest of their claim for one hundred twenty thousand dollars ($120,000.00). This joint entry was approved and journalized the same day, and was the entry from which Timmons filed a Notice of Appeal, Case Number 94-CA-8; the Defendant considered the entry to be a subterfuge intended to substitute for an Order of Confirmation.

On April 14, 1994, RAK REE filed a motion for deficiency judgment for the amount of forty-five thousand dollars ($45,000.00). The calculations were based upon the limited return of seventy-five thousand dollars ($75,000.00) from the sale, as stipulated in the agreed entry, and their "judgment" from the bankruptcy court for one hundred twenty thousand dollars ($120,000.00). The court awarded RAK REE a deficiency judgment for forty-five thousand dollars ($45,000.00) on April 14, 1994, the same day the motion was filed. RAK REE followed with a supplement to the motion on April 20, 1994, when they filed a certified copy of the bankruptcy "judgment".

Timmons filed a Notice of Appeal from the entry awarding the deficiency judgment, Case Number 94-CA-10, stating that to use an allowed claim from bankruptcy court as a judgment, after the sale, was improper. The claim for RAK REE should have been identified on the Judgment Decree in Foreclosure filed almost seven months before the bankruptcy "judgment". Timmons did not remember this decree, however, because he kept referring to a defect in the "Order of Sale" which did not have the signature of the court and did not carry a time stamp to indicate when the document was filed. The defendant was actually referring to the Clerk of Court's Writ of Execution that carried the title "Order of Sale"; the Defendant had either forgotten or had not seen the Judgment Decree in Foreclosure that had been filed the previous year.

The sale was confirmed at a hearing held May 19, 1994. The bid had now been transferred from Ducks Unlimited, an interested party in the previous appeals, to another conservation group, the Wildlife Federation of America. Three days after confirmation, Wildlife Federation of America paid two hundred five thousand dollars ($205,000.00) for the property. On May 25, 1994, RAK

REE filed a motion for the distribution of a joint payee check, which was immediately approved and journalized. The funds from the sale were then distributed according to the "Agreed Entry" filed March 29, 1994. On June 15, 1994, Timmons filed a Notice of Appeal from the Order of Confirmation, Case Number 94-CA-14. The appeal was founded upon the absence of judgment for RAK REE and the defect in the Notice of Sale; either of which should have obviated confirmation.

On November 8, 1994, Farm Credit Services filed another motion for summary judgment on their third cause of action. The sale proceeds were also insufficient to satisfy their judgment, and this creditor now sought to satisfy the deficiency with a Writ of Possession and sale of the Defendant's farm machinery. The court held a hearing on December 14, 1994, granted the deficiency judgment, and allowed the possession of the machinery to satisfy the deficiency. Timmons filed a Notice of Appeal from that order on January 12, 1995, Case Number 95-CA-5, and sought a stay from the Fourth District Court of Appeals by filing a motion in the cases already before that court.

On February 6, 1995, the Ohio Court of Appeals for the Fourth District ruled that the entry of the allowed claim ("judgment") from bankruptcy court was properly handled and that the deficiency judgment itself became the final appealable order upon confirmation of the judicial sale. This court's entry indicated that Timmons had failed to timely object to the motion for deficiency judgment and was therefore time barred from challenging the judgment. Timmons had timely filed an appeal from the order which approved the deficiency judgment, but had been denied the opportunity to object to RAK REE's motion for deficiency judgment because the judgment had been entered the same day the motion was filed. The Fourth District Court of

Appeals did reverse the Order of Confirmation for the Judicial Sale, based upon the defect in the Notice of Sale, and remanded the case to the trial court for "further proceedings".

One week later, on February 13, 1995, the second mortgagee, Farm Credit Services, filed a praecipe for Order of Sale on Remand. The Clerk of Courts in Pickaway County promptly filed an "Order of Sale" which was actually the Clerk's Writ of Execution. The "further proceedings" specified in the appellate court's entry should have necessitated a legal notice and hearing in regard to the priority and claims for the various parties. The Ohio Department of Natural Resources had, by now, purchased the farm from Wildlife Federation of America for two hundred five thousand dollars ($205,000.00); the purchase price from the sale. This state agency should have been given priority for the distribution of sale proceeds from a second sale and the claims of the other creditors should have been identified with their priorities; in other words, a new Judgment Decree in Foreclosure was necessary. The Clerk of Courts refused to furnish Timmons a copy of the "Order of Sale" because this order was only a Writ of Execution and the only copy was the one now in the possession of the Sheriff. Timmons obtained a copy of this "Order of Sale" from the Sheriff of Pickaway County and filed a Notice of Appeal, Case Number 95-CA-2, from the order that was, in actuality, a writ.

A motion for reconsideration of the Fourth District Court's decision was timely filed. The lack of a judgment before the sale, the fact that the bankruptcy "judgment" was still under appeal in the Federal Appellate System, and the issue of responsibility for advertising and other costs, associated with a voided judicial sale, were presented for examination. Timmons did not receive a response to the motion and an appeal was taken to the Supreme Court for the State of Ohio.

A motion for stay was filed with the trial court and then withdrawn after the appeal to the Supreme Court of Ohio was perfected. The trial court had previously refused to grant a stay until a supersedeas bond for two hundred thousand dollars ($200,00.00) was posted. Because the bond was improbable if not impossible, the Defendant had sought another mechanism to stay a second judicial sale until the RAK REE claim was determined. Timmons argued at a hearing in the trial court, without success, that jurisdiction for the case still rested with the Supreme Court of Ohio and until the issues were resolved or dismissed, the trial court could not proceed. The issue was also raised that a new Judgment Decree in Foreclosure was necessary before the clerk of courts could issue a Writ of Execution. These issues were ignored and the court allowed the judicial sale to proceed.

THE SUPREME COURT OF OHIO

Case Number 95-609 was filed in the Supreme Court of Ohio on March 23, 1995. Timmons sought review of the lack of a judgment for RAK REE that violated Rule 54(b) of the Ohio Rules of Civil Procedure and also asked the court to determine the assignment of court costs and other fees associated with a voided judicial sale. Timmons filed a Motion for Emergency Stay with this court because the trial court was again proceeding to a judicial sale on remand.

On April 25, 1995, by a vote of four to three, the Supreme Court of Ohio denied Timmons' motion for stay pending appeal. The court later refused to accept jurisdiction for the appeal and the Court refused to accept jurisdiction for the appeal which was dismissed June 28, 1995.

SECOND JUDICIAL SALE

On May 9, 1995, the property was again sold at judicial sale. The successful purchaser was again the Ohio Department of Natural Resources with a bid of one hundred seventy five thousand dollars ($175,000.00). The Assistant Attorney General representing Natural Resources did file a Notice of Lien and subrogated interest, in the sale of the property, the day before the sale. Section 2329.46 of the Ohio Revised Code provides for the subrogation of the rights of the creditor to the purchaser at a judicial sale that is later set aside. The money paid by the purchaser to the creditor need not be returned but liens and other assignments would be subrogated to the purchaser at a void judicial sale.

Timmons returned several times to check the file for an order confirming the sale. The reply was always that the order of confirmation had not yet been filed. The Defendant came to the conclusion that the court did not have to confirm the sale because there was no change in status for the case. Additional court costs, advertising fees, and reconciliation of the lower bid from the second sale compared to the first sale were the only variables. The purchaser was the same, the deed had already been filed, and the court had no reason to confirm the second sale. A hearing was held at which the court ordered the defendant to pay court costs and allowed the State of Ohio a deficiency judgment for the difference between the first and second sale prices.

CONTINUED FEDERAL APPEALS

On January 20, 1995, the United States Court of Appeals for the Southern District of Ohio filed an entry for the consolidated appeals from bankruptcy court. This court affirmed the dismissal but declined review of the RAK REE "judgment". On May 19, 1995, in response to a Motion for Rehearing and Reconsideration, this court again denied the Appellant the review of the RAK REE "Judgment". The

reasoning was that the dismissal was affirmed and if a state court had used the bankruptcy judgment, reversal of the judgment on appeal, in the federal courts, would not affect the state court decision.

Timmons appealed to the United States Court of Appeals for the Sixth Circuit, Case Numbers 95-3201 and 95-3203, stating that the RAK REE judgment had been rendered in Federal Court and the Appellant had the right to have the judgment reviewed by the federal appellate courts. On February 12, 1996, the Sixth Circuit affirmed the bankruptcy courts order of dismissal and refused the review of the RAK REE judgment. Their reasoning was patterned after the district court's argument that the reversal of the judgment would have no meaning in the state courts and that the issue of the RAK REE Judgment was a matter to be decided by the state courts.

SECOND FORECLOSURE - CASE NUMBER 96-CI-41

On April 29, 1996, RAK REE filed an amended second complaint in foreclosure which asked the Ohio Court of Common Pleas in Pickaway County to allow the Plaintiff the right to foreclose on certain specific properties inherited by Timmons and other family members. By adding the other family partners in a new complaint, the creditor sought to legitimize his right to foreclose upon their property. The Plaintiff stated that the owners were Tenants in Common and therefore the property was subject to foreclosure. The original complaint stated that Timmons had finally lost all of his appeals of the bankruptcy court judgment in the Sixth Circuit and that this creditor was now entitled to collect upon their deficiency judgment.

Timmons denied that RAK REE had the right to collect from these properties (specific partnership property)

and stated that he had neither won nor lost his appeal of the RAK REE judgment in the federal appellate courts. A motion for Relief from Judgment pursuant to Rule 60(b)(4) of the Ohio Rules of Civil Procedure was filed along with a counterclaim based upon the overpayment of seven thousand seven hundred forty-nine dollars and sixty cents ($7,749.60) from the proceeds from the first sale of property.

Timmons argued that an appellant had the right to have all Final Orders, Judgments, and Decisions, rendered by a bankruptcy court, reviewed on appeal to a district court. It was also an appellant's right to have all Final Orders, Judgments, and Decisions, rendered in a district court, reviewed on appeal to a circuit court. It would therefore logically follow that because the RAK REE "Judgment" was denied review by the district court and the Sixth Circuit, the judgment was interlocutory and not final. Because the "Judgment" lacked finality in the bankruptcy court, it could not now be used as the basis for a deficiency judgment; the judgment had been vacated or no longer had prospective application.

Timmons later decided that relief from the deficiency judgment must be obtained in the original foreclosure case and filed an identical motion for relief in that case. The motion was denied and the Defendant filed an appeal from the denial, Case Number 97-CA-24, to the Ohio Court of Appeals for the Fourth District.

APPEAL FROM THE ORDER OF CONFIRMATION FOR A SECOND JUDICIAL SALE–CASE NUMBER 96-CA-46

Timmons "found" the Order of Confirmation for the second judicial sale of his property while researching the original foreclosure file, Case Number 86-CI-337, in preparation for his Motion for Relief from Judgment in the

case which had awarded the deficiency judgment. Ohio law states that an appeal must be taken from an order within thirty (30) days after entry of the order. The Ohio Appellate Rules state, however, that if an entry is not sent to all parties and notation attesting to service is not placed in the appearance docket within the three days prescribed for such service, the time for appeal is thirty days after service. Timmons filed an appeal from the order of confirmation for the second sale, Case Number 96-CA-46, on December 27, 1996. This order had been issued on June 26, 1995 and had evidently not been available to the Defendant when he was actively searching for the order at the earlier date.

The Fourth District Court of Appeals ruled that the order of confirmation is not a final appealable order and because the order was not final, they had no jurisdiction to consider the appeal. The only final order from which an appeal could be taken would be from the Judgment Decree in Foreclosure or order of sale.

Timmons filed an appeal from this dismissal with the Supreme Court of Ohio, Case Number 97-1040. The Appellant tried again to present his case that there was no valid judgment for RAK REE before the first sale and there was no Judgment Decree in Foreclosure or Order of Sale from the Court before the second sale. The trial court had confirmed, but had never ordered or authorized, the sale. On September 3, 1997, the Supreme Court declined jurisdiction to hear the case.

BANKRUPTCY APPELLATE PANEL

CASE NUMBER 97-8024

An appeal was taken from the order which approved the Bankruptcy Trustee's Final Report and which closed

Bankruptcy Case 93-54857. The Trustee had listed all claims filed in the case as having been allowed. Some claims, from administrative agencies, were allowed even though they had been filed after the case was dismissed. The Bankruptcy Appellate Panel Decision stated that the issue of the RAK REE claim was rendered moot when the bankruptcy case was dismissed. The Appellant presented this decision to the Fourth District and the trial court and argued that the "claim" allowed in a dismissed bankruptcy case was without value in a court of common pleas and could not be used as the foundation for a deficiency judgment.

EXECUTION SALE

A praecipe for a writ of execution for the sale of the Defendant's machinery and chattels was filed August 20, 1997. Notice and hearing was not afforded the Defendant before the writ was issued and the Plaintiff did not obtain the prior approval from the Court of Common Pleas to sell the machinery.

The trial court denied Timmons' motion for stay of execution but the Fourth District Court of Appeals did grant a stay on November 19, 1997; one day before the sale. However, the stay was conditioned upon the posting of a bond for one hundred thousand dollars ($100,00.00). This seemed somewhat excessive when viewed from the standpoint that the deficiency judgment, now under attack with the motion for relief from judgment, was for only forty-five thousand dollars ($45,000.00). The Appellant had argued from his motion that the property should satisfy the bond requirement until a decision was reached on the appeal. The machinery was sold November 20, 1997.

REASONS FOR GRANTING THE PETITION

The Supreme Court of Ohio failed to see a constitutional issue and declined to accept jurisdiction for the case. However, the Petitioner believes that he was deprived of due process when the Ohio Court of Common Pleas continued to a judicial sale, the first time, without adjudicating the debt owed the first mortgagee. The property was sold a second time without a new order of sale or judgment decree in foreclosure and with an "allowed claim" from the bankruptcy court which was to substitute for a judgment.

Every man has the right to know his debt and object to a claim in a foreclosure action if the claim is not supported by fact and law. The state district court refused to hear the appeal because thy had used a local case which does deny an individual the right to collaterally appeal a judgment out of time with appeals from orders made past the bar date for appeals. However, in this case the court did not adjudicate but rather tried to legislate and bully what the court thought appropriate and not from the law.

Civil Rule 54(B) is directional and controlling. The judgment for FCS was a final judgment for this creditor and could not be challenged with an appeal from a confirmation order. However, hearings were being held and briefs were being filed almost three months after a Judgment Decree in Foreclosure had been journalized. The FCS claim was a valid judgment upon the facts; the RAK REE "allowed claim" is a sham and a fraud.

The denial of a stay or the fixing of an exorbitant supersedeas bond would appear to be prejudicial and discriminatory and subject to judicial abuse. The district court fixed the sum of one hundred thousand dollars ($100,000.00) to afford the Appellant relief from an unjust sale of his machinery. The implements should have been

bond for itself and a moderate bond should have been fixed which was affordable but which would compensate the creditor for his interest costs for the pendency of an appeal if the appeal was lost. The two hundred thousand bond to stay the sale of the Petitioner's farm is also unconscionable. The property probably would have returned more with a later sale and the delay of two months would not have necessitated alarm. It would seem that the courts were trying to punish and obstruct the Petitioner from further appeals by denying a reasonable bond. If an individual has the means to deposit a large sum as bond, then he has been afforded the opportunity to seek his justice. The individual not able to provide bond is not allowed the opportunity to seek relief from improper judgments and his property is sold. This is judicial discrimination and deprivation of property at its finest.

An order confirming a judicial sale has long been considered a final order that was appealable. *Reed v Radigan, (1884), 42 Ohio St.* 292 solves the problem correctly. "A confirmation order is a final appealable order because it operates to divest the mortgagor of his title, which is a substantial right, in a special proceeding." ---. "The judgment entry determines the amount due which serves as the basis for redemption on the one hand or distribution of sale proceeds on the other hand." It was the denial of the right to a judgment and the potential to redeem the property without judicial sale which must now be considered a violation of the Petitioner's rights.

Third National Bank of Circleville v. Speakman, (1985), 18 Ohio St. 3d 119. Does prevent appeals from judgments that are time barred. However, Timmons was not attempting to challenge the Farm Credit Services judgment because it did appear to be correct. What was necessary was the right to have a review of the confirmation order because there was no judgment for RAK REE and there was no

Judgment Decree in Foreclosure for the second sale. The first "order of sale" was a fraud and would be void from its inception. A void judgment cannot be confirmed and a sale based upon a void judgment is itself void. 64 O Jur 3d *& 644.

CONCLUSIONS

Once the Debtor was dismissed from bankruptcy without confirmation of a plan of reorganization or discharge of debt, then that court loses jurisdiction over the person and would therefore lose jurisdiction over any judgment rendered in a case which was not discharged. The state law would need to prevail once this court lost jurisdiction. The RAK REE "judgment" rendered by the bankruptcy in the face of dismissal cannot then be accepted. It also is a fraud.

The Petitioner now seeks relief in The Supreme Court of the United States of America with this petition for a writ of certiorari. Due Process, guaranteed by the Fourteenth Amendment to the Constitution of the United States of America, was denied the Petitioner and the probability must be recognized that the Petitioner was also denied equal protection" of the law with the fixing of an exorbitant bond.

The fraud in attempting to prevent a judgment and to reward RAK REE an unjust reward must alo be contemplated. This creditor did have the right to collect his debt; they did not have the right to prosecute a fraudulent claim. The Petitioner asks that relief be granted and justice returned to a small part of his life and world. Reverse the order of confirmation and remand the case for a proper determination based upon the evidence. Judicial infringement on constitutional rights and the attempt to bully what a court thought was permissible should not be tolerated. RAK REE received a very good return on their investment

and if the Petitioner had not been at the sale that transferred the property to his possession, they would have been poorer by far.

Respectfully Submitted,

John Timmons

10375 US Rt 23

Lockbourne, Ohio 43137

(614) 983-3654